

REMARKS

Claims 1-11, 13 and 14 are pending in this application. Claims 10 and 12 were canceled in the Preliminary Amendment dated August 11, 2006, without prejudice or disclaimer for the sole reason of advancing prosecution. Applicants reserve the right to reassert any of the claims previously canceled herein in a continuing application.

Applicants thank Examiner O'Dell and Supervisory Examiner Desai for conducting a telephone interview with the undersigned attorney on February 12, 2009. As discussed during the interview, Applicants file herewith a Terminal Disclaimer over US Patent No. 7,329,676 to obviate the obviousness-type double patenting rejection. Further, with regard to the provisional obviousness-type double patenting rejection over fifteen copending Applications, the Examiners agreed that only copending Application Nos. 10/524,820 and 12/000,710 ("the '710 Application") would qualify to serve as the basis of a provisional obviousness-type double patenting rejection, because thirteen of the copending Applications have later effective filing dates than the present Application.

In view of the following, further and favorable consideration is respectfully requested.

- I. At pages 2-8 of the Official Action, claims 1-11 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of US Patent No. 7,329,676 in view of US Patent Application Publication No. 2006/0116518.***

In order to advance prosecution, Applicants file herewith a Terminal Disclaimer over US Patent No. 7,329,676 to obviate this obviousness-type double patenting rejection.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

- II. At page 8 of the Official Action, claims 1-11 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over US Patent Application No. 10/524,634 in view of US Patent No. 7,329,676.***

Applicants respectfully note that US Patent Application No. 10/524,634 has been abandoned thus rendering this provisional obviousness-type double patenting rejection moot. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this provisional rejection.

- III. Additional double patenting issues.***

The Examiner has identified fifteen applications with the inventor in common, all with similar titles and subject matter and asserts that the burden has now shifted to the Applicant to provide information regarding any instance of double patenting in view of the rejections above. The table below shows the fifteen copending applications identified by the Examiner, along with their respective effective US filing dates for the purposes of this provisional obviousness-type double patenting rejection.

<i>US Application No.</i>	<i>Effective US filing date</i>
Present Application No.: 10/589,082	February 17, 2005
<i>10/524,820</i>	<i>August 29, 2003</i>
10/590,803	March 2, 2005
10/590,805	March 3, 2005
10/591,472	March 8, 2005
10/591,478	March 8, 2005
10/591,480	March 9, 2005
10/591,768	March 9, 2005
11/661,369	September 5, 2005
11/661,377	September 5, 2005
11/795,981	January 31, 2006
11/884,934	March 1, 2006
11/884,935	March 1, 2006
11/885,425	March 9, 2006
<i>12/000,710</i>	<i>August 28, 2003</i>

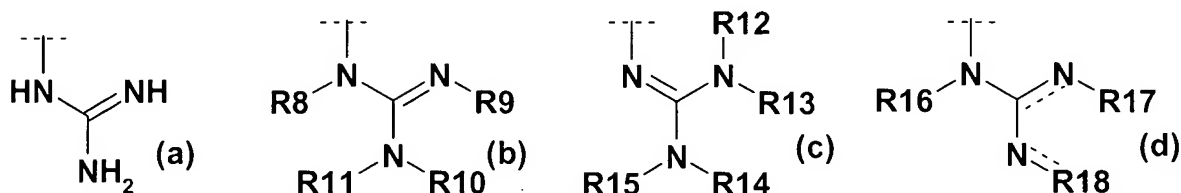
As discussed during the telephone interview of February 12, 2009 and agreed to by the Examiners, only copending Application No. 10/524,820 and the '710 Application would qualify to serve as the basis of a provisional obviousness-type double patenting rejection, because thirteen of the copending Applications have later effective filing dates than the

present Application. As indicated in **MPEP** 1490, "if the provisional obviousness-type double patenting (OTDP) rejection is the only rejection remaining in the earlier-filed of two pending applications, the examiner should then withdraw the provisional OTDP rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer." Accordingly, Applicants submit that because the present Application has an earlier effective US filing date than thirteen of the copending Applications, only copending Application No. 10/524,820 and the '710 Application should remain as a part of this OTDP rejection.

Applicants respectfully note that the claims in the '710 Application are directed towards methods of treatment, whereas the claims under consideration in the present Application are directed towards compounds and compositions. The methods of treatment claims in the present application have been previously withdrawn as being directed to non-elected subject matter. Therefore, Applicants submit that the presently pending claims are patentably distinct. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this provisional OTDP rejection over the '710 Application.

Further, Applicants respectfully note that Application No. 10/524,820 has recently granted to US Patent No. 7,423,046 ("the '046 patent"). Therefore, as a technical matter, the '046 patent can not be included as a part of this provisional obviousness-type double patenting rejection. With regard to an OTDP rejection over the granted claims of the '046 patent, Applicants submit and the Examiner has agreed that such a rejection would not be proper, because the presently claimed substituents at the R6 and R7 positions are patentably distinct. In particular, the presently claimed substituent at the R6 position is

hydrogen, halogen, nitro, 1-4C-alkyl, trifluoromethyl or 1-4C-alkoxy, and the presently claimed substituent at the R7 position is a radical of formulae (a), (b), (c) or (d)



In contrast, the R6 substituent of the granted '046 patent is cyano or cyclopropylmethoxy, and the R7 substituent is hydrogen or cyclopropylmethoxy. Applicants respectfully submit that the R6 and R7 substituents of the presently claimed compounds are patentably distinct over the granted claims of the '046 patent.

Further, in the Interview Summary mailed February 26, 2009, the Examiners agreed that the presently claimed compounds are patentably distinct over those claimed in the '046 patent and that "no ODP rejection would be made over the '046 patent."

Accordingly, Applicants request that the Examiner reconsider and withdraw this provisional OTDP rejection over the fifteen copending Applications listed by the Examiner.

CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all rejections and allow all pending claims in this application. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned attorney if she has any questions or comments.


Respectfully submitted,

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